IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.502 OF 2005

Shivaji Satavappa Khot ... Petitioner

versus

The State of Maharashtra & ors. ... Respondents

...

Mr.Madhav Jamdar, for the Petitioner.

Mr.V.B. Konde Deshmukh, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

23rd February 2005

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Konde Deshmukh, A.P.P., waives notice for the Respondents. As short question is involved, petition is taken up for final disposal forthwith by consent.

. This petition takes exception to the order passed by the competent authority dated 13th January 2005 rejecting the Petitioner's application for furlough leave. The only reason recorded in the order is that if the Petitioner is released, there is danger to the lives of prosecution witnesses and relatives of the victim.

. Having considered the rival submissions and going through the record, this ground cannot be sustained for the simple reason that the Petitioner was released on bail during the pendency of the trial. There is nothing on record to suggest that the Petitioner had jumped any of the conditions of bail, much less threatened any prosecution witnesses. If it is so, the apprehension is wholly misplaced. Assuming that the apprehension is genuine and some new material has come on record before the competent authority, even in that case, the fact that the Petitioner, if released on bail, may threaten prosecution witnesses can be taken care of by imposing strict conditions on the prisoner. That course is open to the competent authority.

However, that aspect has not been explored at all as can be seen from the record. Accordingly, the order in question cannot be sustained. The same is set aside. Whereas, the competent authority is directed to allow the application preferred by the Petitioner as per the Rules. As mentioned earlier, if the competent authority has material to support the apprehension of prosecution witnesses being threatened if the Petitioner is released, in that case, the competent authority may impose conditions, amongst others, restricting the Petitioner's entry in the relevant areas where the prosecution witnesses and the relatives of the victim are residing. That option is left open to the competent authority. Petition disposed of on the above terms.

(A.M.KHANWILKAR,J.)